IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

No. 408

GENERAL HOUSES, INC., a corporation,

Petitioner,

vs.

RECONSTRUCTION FINANCE CORPORATION, a corporation, MARLOCH MANUFACTURING CORPORATION, a corporation, THE GREENPORT BASIN AND CONSTRUCTION COMPANY, a corporation, ELIZABETH W. TULLOCH AND CHARLES M. ROSS, as Executors and Trustees of the Estate of Marshall E. Tulloch, Deceased, and FRANKLIN G. FLOETE, as Administrator of GENERAL SERVICES,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

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Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

Petitioner, GENERAL HOUSES, INC., a corporation, respectfully prays this Court's writ of certiorari to review and reverse the decision of the United States Court of Appeals for the Second Circuit in this case.

CITATIONS TO OPINIONS BELOW.

The opinion of the United States Court of Appeals for the Second Circuit in this case is reported as *General Houses, Inc., Plaintiff-Appellant,* v. *Franklin G. Floete, as Administrator of General Services, et al., Defendants-Appellees,* 267 F. (2d) 306. It is reprinted in full as Appendix I to this Petition.

Petitioner filed petitions for a writ in the nature of mandamus or, in the alternative, for a writ of prohibition or certiorari, against the trial judge in this case, the Honorable Walter Bruchhausen, Judge of the United States District Court for the Eastern District of New York, in both the United States Court of Appeals for the Second Circuit and in this Court. The decision in the United States Court of Appeals denying the petition in that court is reported as *General Houses, Inc., Petitioner,* v. *The Honorable Walter B. Bruchhausen, Judge of the District Court for the Eastern District of New York, Respondent,* 256 F. (2d) 674. It is reprinted as Appendix II to this Petition. The mandamus proceeding in this Court bears No. 768 Misc. and is not reported. The order (without opinion) denying the petition in this Court is reprinted as Appendix III to this Petition.

The final judgment of the United States District Court for the Eastern District of New York from which this appeal is taken is reported as *General Houses, Inc., a corporation,* v. *Franklin G. Floete, as Administrator of General Services, et al.,* 166 Fed. Supp. 106. The opinion in that court is printed at page 125a of Petitioner's Appendix in that court. The judgment of that Court is reprinted as Appendix IV to this Petition.

A prior appeal in this case to the United States Court of Appeals for the Second Circuit, which has nothing to

do with the issues here, is reported as *General Houses, Inc.* v. *Marloch Manufacturing Corp.*, 239 F. (2d) 510.

This case involves the "Reorganization Plan No. 1 of 1957" which the Federal Congress adopted and made effective as of June 30, 1957 (15 U.S.C.A., Sec. 601). It is reprinted as Appendix V to this Petition.

This case also involves amended Section 105 of the Reconstruction Finance Corporation Liquidation Act (68 Stat. 320) (15 U.S.C.A., 1958, Cumulative Annual Pocket Parts, Sec. 603, p. 30) which the Federal Congress adopted and made effective as of June 29, 1954. It is reprinted as Appendix VI to this Petition.

STATEMENT OF THE GROUNDS ON WHICH THE JURISDICTION OF THIS COURT IS INVOKED.

The opinion of the Court of Appeals was filed and its judgment was rendered on June 1, 1959. No petition for rehearing was filed. This Court has entered an order on August 19, 1959 extending the time for the filing of this Petition for Certiorari to September 18, 1959.

This Court's jurisdiction is invoked under Section 1254(1) of the United States Judicial Code (U.S.C.A., Tit. 28, Sec. 1254(1)), which confers upon this Court jurisdiction to review decisions of the United States Courts of Appeals.

THE QUESTIONS PRESENTED FOR REVIEW.

The questions for review are:

(1) Was Petitioner deprived of its property (its contractual rights against Reconstruction Finance Corporation (hereinafter called "R.F.C.")) when the District Court failed and refused to adjudicate Plaintiff's cause of

action against R.F.C. upon the ground that the functions of R.F.C. had been "abolished", when in fact R.F.C. had neither been "dissolved" nor "extinguished" as a Federal corporation?

(2) Was Petitioner deprived of its right to its "day in court" and to procedural due process of law under the Fifth Amendment to the Federal Constitution, when Petitioner was deprived of its right under Rule 33 of the Federal Rules of Civil Procedure to require R.F.C. and Franklin G. Floete, as Administrator of General Services (hereinafter called "Floete"), to answer Petitioner's Interrogatories in the trial court prior to the trial therein so that Petitioner was prevented from obtaining the evidence essential to prove its causes of action against all of the defendants (Respondents) in this case, including both R.F.C. and Floete?

STATEMENT OF THE CASE

Petitioner filed this action in the United States District Court for the Eastern District of New York in 1950 against R.F.C., a corporation created by Act of Congress, and Marloch Manufacturing Corporation, a New York corporation, (and others) for damages for breach of three written contracts (one between Petitioner and R.F.C. and the other two between Petitioner and Marloch Manufacturing Corporation) and for inducing a breach of such contracts. The first contract required the mass production in a factory of two thousand (2,000) prefabricated houses by Petitioner, and guaranteed a market for any unsold houses by R.F.C. (33a-72a).* The second and third contracts (or more properly sub-contracts) required Marloch Manufacturing Corporation to make the entire 2,000 houses for Petitioner exactly in accordance with Petitioner's obligation to R.F.C. under the first contract (75a-80a, 84a-85a).

There was diversity jurisdiction in the Federal Court as between Petitioner and Marloch Manufacturing Corporation and the other Defendants (except R.F.C.), and there was jurisdiction of Petitioner's cause of action against R.F.C. by virtue of the Veterans Emergency Housing Act of 1946, Act of May 22, 1946, C. 286, §§ 1, 12, 60 Stat. §§ 207, 215 (50 U.S.C.A., Secs. 1822, 1832).

Petitioner filed written Interrogatories to be answered by R.F.C. under Rule 33 of the Federal Rules, which Interrogatories were essential for Petitioner's preparation for trial of the several causes of action in the Petitioner's complaints against R.F.C. and the other defend-

* Figures in parentheses refer to pages in "Appellant's [Petitioner's] Appendix" filed in the Court of Appeals.

ants. These Interrogatories were never required to be answered by R.F.C. prior to trial (115a-116a) and thereby Petitioner was deprived of its right to its "day in court" and to procedural due process of law under the Fifth Amendment.

On April 29, 1957, President Eisenhower submitted to the Federal Congress his "Reorganization Plan No. 1 of 1957" which the Congress adopted and made effective as of June 30, 1957 (Appendix V to this Petition). This Reorganization Plan purported to "abolish" Reconstruction Finance Corporation (15 U.S.C.A., Sec. 601), but it did not "dissolve" R.F.C., there being an important distinction between the two (*Hemingway* v. *Stansell*, 106 U.S. 399). Three years earlier, on June 29, 1954, the Congress had amended Section 105 of the Reconstruction Finance Corporation Liquidation Act (68 Stat. 320) (15 U.S.C.A., 1957, Cumulative Annual Pocket Parts, Sec. 603, p. 30) to provide that no suit then pending against R.F.C. should be abated by reason of the *dissolution* of R.F.C. (Appendix VI to this Petition). It was further provided in said Amendment that in the event R.F.C. should be *dissolved*, then within 12 months thereafter the court in which any suit was then pending against R.F.C. "may . . . allow the same to be maintained . . . against the officer or agency of the Government performing the functions with respect to which any suit . . . was commenced." This provision of the Liquidation Act is still in force.

On January 6, 1958, Petitioner moved in the trial court in this case for an order to *add* Franklin G. Floete, as Administrator of General Services, and the United States of America as *additional* parties defendant (102a-110a). Petitioner's position was that it had the constitutional right to keep R.F.C. in the case as a defendant because, though "abolished", it had never been "dissolved." Peti-

tioner also moved the trial court to require both R.F.C. and Floete to answer Petitioner's Interrogatories, without which answers Petitioner could not prepare its case for trial (102a-103a, 117a).

On March 25, 1958, the trial judge (Judge Bruchhausen) denied Petitioner's motion to make Floete an *additional* defendant and ordered that Floete be "substituted" for R.F.C. (115a-116a). At the same time Judge Bruchhausen denied Petitioner's motion to require answers to be filed by both R.F.C. and Floete to Petitioner's Interrogatories, with the result that Petitioner was never able to get the essential evidence to prove Petitioner's causes of action against R.F.C. and the other defendants at a trial on the merits in the trial court, and was forced to go to trial without it. Petitioner claims that it was thereby deprived of its right to procedural due process of law under the Fifth Amendment.

Plaintiff thereupon promptly filed a mandamus proceeding in the United States Court of Appeals for the Second Circuit on April 1, 1958, asserting its constitutional rights and asking for the vacating of the order of March 25, 1958 (a) refusing to add Floete as an *additional* defendant and (b) refusing to order both R.F.C. and Floete to answer Petitioner's Interrogatories before placing the case on trial. The United States Court of Appeals for the Second Circuit denied this mandamus petition on April 28, 1958, upon the express ground that Petitioner could have these matters reviewed by the present direct appeal (*General Houses, Inc.* v. *Bruchhausen*, 256 F. (2d) 674) (Appendix II to this Petition).

Petitioner then filed another mandamus proceeding in this Court as *General Houses, Inc.* v. *Bruchhausen*, No. 768 Misc., asking for the same relief. This petition was denied by this Court on June 23, 1958, without opinion (Appendix III to this Petition).

On May 20, 1958, while Petitioner's application for a writ of mandamus was still pending undetermined in this Court, the trial judge forced Petitioner to go to trial without requiring either R.F.C. or Floete to answer Petitioner's Interrogatories, thereby preventing Petitioner from preparing its case for trial against all of the defendants. In other words, the foregoing procedures in the trial court effectively deprived Petitioner of its "day in court" by preventing Petitioner from exercising its peremptory right under Federal Rule 33 to procure essential evidence to prove its case against all of the defendants, in the form of the answers of R.F.C. and Floete to Petitioner's Interrogatories.

Floete never filed any answer to the Petitioner's Complaint or any other pleading in the case, either before or after being purportedly "substituted" for R.F.C. as a defendant. Nevertheless, his attorney appeared and participated in the trial. However, R.F.C., which had previously answered Petitioner's Complaint, neither appeared nor participated, nor made any defense, at the trial.

The trial judge entered a final judgment on October 3, 1958 against Petitioner and in favor of Floete (and the other defendants) (Appendix IV to this Petition), *but entered no final judgment either in favor of or against R.F.C.* Thus Petitioner's cause of action against R.F.C. has never been adjudicated either against or in favor of R.F.C.

The final judgment of the trial court was affirmed by the United States Court of Appeals for the Second Circuit on June 1, 1959, in an opinion which is reprinted in full as Appendix 1 to this Petition and which is reported as *General Houses, Inc.* v. *Franklin G. Floete, as Administrator of General Services, et al.*, 267 F. (2d) 306.

Petitioner expressly raised and relied upon its constitutional right to keep R.F.C. as a defendant in this case.

and to have Petitioner's cause of action against R.F.C. adjudicated in this action, under Point IV of Petitioner's Brief (p. 40-1) filed in the Court of Appeals. In support of Petitioner's Point IV, under the heading "The Trial Judge's Orders Substituting Floete For R.F.C. As Defendant Were Erroneous And Should Be Reversed On This Appeal", Petitioner relied upon the same grounds for its position as were previously set forth in its mandamus petition filed in the Court of Appeals on April 1, 1958, in which Petitioner cited *Hemingway* v. *Stansell*, 106 U.S. 399, and other Federal cases.

Petitioner also expressly raised and relied upon its constitutional right to its "day in court" and its right to require R.F.C. and Floete to answer Petitioner's Interrogatories as a part of Petitioner's right to due process of law under the Fifth Amendment in Point V of its Brief (p. 42-4) filed in the Court of Appeals. Under the heading "The Judgment Appealed From Should Be Reversed Because Plaintiff Was Deprived Of Its Right To Have R.F.C. and Floete Answer Plaintiff's Interrogatories", Petitioner relied upon the mandatory language of Rule 33 of the Federal Rules requiring that Plaintiff's Interrogatories "*shall be answered* expressly and fully in writing under oath". Petitioner there contended that the refusal of the trial judge to continue the trial of the case, and to require R.F.C. and Floete to answer Petitioner's Interrogatories before Petitioner should be forced to trial, deprived Petitioner of its right to prepare its case for trial and thereby effectively deprived Plaintiff of its "day in court" and its right to procedural due process of law in violation of the Fifth Amendment, citing *Brinkerhoff-Faris Trust & Sav. Co.*, v. *Hill*, 281 U.S. 673, and other Federal cases.

It thus appears that Petitioner expressly raised and relied upon its same constitutional rights in both of the mandamus proceedings, and in the Court of Appeals on the direct appeal thereto in this case, upon which Petitioner now relies in this Petition.

REASONS RELIED UPON FOR THE GRANTING OF THE WRIT.

I.

PETITIONER WAS DEPRIVED OF ITS CONSTITUTIONAL RIGHT TO KEEP R.F.C. AS A DEFENDANT IN THE CASE IN THE TRIAL COURT, AND TO HAVE THE TRIAL COURT ADJUDICATE PETITIONER'S CAUSE OF ACTION AGAINST R.F.C. THEREIN.

Petitioner in its Complaint showed that it is the owner of an extremely valuable property right consisting of its claim against R.F.C. for $6,200,000 as damages for breaches by R.F.C. of its written contract with Petitioner dated February 7, 1947 (4a-87a). This valuable property right is plainly such that Petitioner may not lawfully be deprived thereof without due process of law, in view of the Fifth Amendment to the Federal Constitution.

The order of March 25, 1958 entered by the trial judge (Bruchhausen), insofar as it "substituted" Franklin G. Floete, as Administrator of General Services, "in place of defendant Reconstruction Finance Corporation" (116a), effectively terminated and dismissed and thereby destroyed Petitioner's valuable property right to sue R.F.C. for damages for R.F.C.'s breach of said written contract dated February 7, 1947, in violation of the Fifth Amendment.

The fact that the Federal Congress adopted President Eisenhower's so-called "Reorganization Plan No. 1 of 1957" on June 30, 1957, in which it is provided that R.F.C. be thereby "abolished" (15 U.S.C.A., Sec. 601), did *not* thereby "dissolve" R.F.C. or terminate or extinguish its corporate existence (Appendix V to this Petition).

This crucial distinction between the abolishment of R.F.C., on the one hand, and its dissolution or extinction, on the other hand, was considered and relied upon by this Court in *Hemingway* v. *Stansell*, 106 U.S. 399.

In the *Hemingway* case, in an unanimous opinion by Judge Gray, this Court expressly held that a state statute purportedly "abolishing" a municipal (state) corporation "did not dissolve or extinguish the corporation." Accordingly, this Court held that the plaintiffs in the *Hemingway* case had the right to continue to sue the original municipal corporation, which had been abolished but had *not* been dissolved or extinguished.

The effect of the *Hemingway* case, when applied to the case at bar, is that, even though the so-called "Reorganization Plan No. 1 of 1957" purportedly "abolished" the functions of R.F.C. as a Federal government corporation, nevertheless it did not thereby "dissolve" or terminate or extinguish R.F.C. as a governmental corporation.

But even if R.F.C. had been "dissolved", as distinguished from its "functions" being "abolished", nevertheless Petitioner was entitled to continue to litigate its cause of action against R.F.C. as a defendant in this case, in view of Section 105 of the Reconstruction Finance Corporation Liquidation Act, as amended on June 29, 1954 (68 Stat. 320) (15 U.S.C.A. 1957, Cumulative Annual Pocket Parts, Sec. 603, p. 30), which expressly provides that no suit, action or other proceeding lawfully commenced against R.F.C. "shall abate by reason of the dissolution of the corporation". (Appendix VI to this Petition).

Moreover, it was further provided in the amended Section 105 that in the event R.F.C. should be *dissolved*, then within 12 months thereafter the court in which any suit

was then pending against R.F.C. "may" allow said suit to be maintained against the officer or agency of the Government performing the functions with respect to which any such suit was commenced. Since R.F.C. was *not dissolved*, but its functions were merely "abolished", the trial court in this case did not have any right to substitute Floete for R.F.C. under amended Section 105 of the Reconstruction Finance Corporation Liquidation Act.

As indicated above, the Court of Appeals denied Petitioner's mandamus petition seeking to require Judge Bruchhausen to vacate his order of March 6, 1958, purporting to substitute Floete for R.F.C., upon the express ground that Petitioner could have its right to keep R.F.C. as a defendant in the case reviewed by this direct appeal. However, the Court of Appeals in its decision in this case (p. 22 of Appendix I below), in affirming the judgment of the trial court, merely noted that:

> "Franklin G. Floete, as Administrator of General Services, has been substituted for the Defendant R.F.C."

The Court of Appeals, therefore, did not give consideration to and pass upon Petitioner's right to keep R.F.C. in the case and to require the trial judge to adjudicate Petitioner's cause of action against R.F.C.

This Court in denying Petitioner's right to a mandamus writ, which petition was based upon substantially the same grounds as Petitioner's like petition in the Court of Appeals, wrote no opinion and gave no grounds for its denial of the petition (Appendix III to this Petition). However, it may safely be assumed that this Court's ground was the same as that of the Court of Appeals, *i.e.*, that Petitioner was not entitled to a writ of mandamus because Petitioner's right to an adjudication of its cause of action against R.F.C. could be reviewed by the Court of Appeals, and by this Court by the issuance of its writ of certiorari, as prayed in this Petition.

Petitioner's position, therefore, is that it has been deprived of its right to keep R.F.C. as a defendant in this case; that Petitioner's Complaint shows that Petitioner is entitled to a valuable property right consisting of its claim against R.F.C. arising by reason of R.F.C.'s breach of its written contract with Petitioner; that this is a property right of which Petitioner may not lawfully be deprived under the Fifth Amendment without due process of law; and that Petitioner has not had its "day in court" and due process of law to establish its cause of action against R.F.C. by reason of the refusal by both the trial court and the Court of Appeals to adjudicate Petitioner's said cause of action, apparently both courts relying upon the erroneous theory that R.F.C. was abolished by the adoption by the Federal Congress of "Reorganization Plan No. 1 of 1957", despite the fact that this Reorganization Plan, although it purported to abolish R.F.C., did not dissolve or extinguish R.F.C.; this being the crucial distinction made by this Court in *Hemingway* v. *Stansell*, 106 U.S. 399.

II.

PETITIONER WAS DEPRIVED OF ITS CONSTITUTIONAL RIGHT TO HAVE R.F.C. AND FLOETE ANSWER PLAINTIFF'S INTERROGATORIES PURSUANT TO RULE 33 OF THE FEDERAL RULES.

Rule 33 of the Federal Rules is mandatory in language. It permits any party to serve written interrogatories upon any adverse party in order to prepare for the trial of the case. Rule 33 expressly provides that :

> "The interrogatories *shall be answered* separately and fully in writing under oath." (Italics added.)

The trial judge in his order of March 25, 1958 denied Petitioner's motion for an adjournment of the trial of this case unless and until R.F.C. and Floete should first answer

certain Interrogatories theretofore propounded by Petitioner (115a), and thereafter compelled Petitioner to go to trial without this crucial evidence, thereby depriving Petitioner of its right to prepare its case for trial by procuring R.F.C.'s and Floete's answers to Petitioner's Interrogatories.

Petitioner's position is that it was thereby deprived of its "day in court" as a part of its right to procedural due process of law in violation of the Fifth Amendment to the Federal Constitution.

This Court will notice from the opinion of the Court of Appeals (Appendix I, pp. 21-22) that the Court of Appeals expressly affirmed the trial court upon the ground that the trial judge, having tried the case without a jury, made detailed findings of fact, which findings the Court of Appeals held to be "clearly correct".

This finding was based upon the record presented to the Court of Appeals containing the evidence in the trial court, which record naturally contained none of the crucial facts which Petitioner would have been in a position to offer in evidence in the trial court, and thereafter to include in the record on appeal, if Petitioner has not been deprived of but had been granted its right to require R.F.C. and Floete to answer Petitioner's Interrogatories under Rule 33.

Expressed in other words, no matter how justified either the trial court or the Court of Appeals may have been in holding that, under the limited evidence in this case which appears in the record, the final judgment against Petitioner and in favor of Floete and the other defendants (other than R.F.C.) was correct, nevertheless Petitioner has been deprived of its right to procedural due process of law because it was prevented by order of the trial judge

from obtaining under Rule 33 the crucial evidence necessary to support its causes of action against R.F.C. and the other defendants herein.

Petitioner is not here disputing the correctness of the trial judge's findings of fact, or the Court of Appeals' holding that such findings were "clearly correct", both of which were exclusively based upon the evidence which was offered in the trial court. What Petitioner is complaining of in this Petition is not only that Petitioner has been deprived of its constitutional right to have R.F.C. kept in the case so that Petitioner's cause of action against R.F.C. may be adjudicated therein, but also that the trial court failed and refused to require R.F.C. and Floete to answer Petitioner's Interrogatories, so that Plaintiff was unable to prove the facts necessary to support its causes of action against R.F.C. and the other defendants.

In this case Petitioner has thus been deprived of its substantial property right by reason of R.F.C.'s breach of its written contract with Petitioner without due process of law, as well as of its right to procedural due process of law by reason of its inability to obtain essential evidence to support its causes of action in accordance with Rule 33 of the Federal Rules, both in defiance of the provisions of the Fifth Amendment to the Federal Constitution.

Only by this Court's issuance of its writ of certiorari pursuant to this Petition can this result be prevented.

CONCLUSION.

Petitioner recognizes that the granting of this Petition for Certiorari is discretionary with the Court, and that such writ will not ordinarily be granted merely because of error by the District Court or the Court of Appeals unless such error contravenes fundamental Federal law.

In the case at bar, the violation of Federal law is so plain and undeniable that Petitioner submits that it has been deprived of its fundamental rights under the Fifth Amendment to the Federal Constitution.

PRAYER FOR THIS COURT'S WRIT OF CERTIORARI

For reasons apparent from the record and stated in this Petition for Certiorari, Petitioner respectfully prays that this Court issue its writ of certiorari to review and reverse the judgment of the United States Court of Appeals for the Second Circuit in this case, with directions to that Court to reverse the judgment of the District Court and to direct the District Court (a) to vacate the order substituting Franklin G. Floete, as Administrator of General Services, for R.F.C., and denying Petitioner's motion to require R.F.C. and Floete to answer Petitioner's Interrogatories under Federal Rule 33, and thereupon (b) to conduct a trial *de novo* in this case in the District Court upon the merits of Petitioner's causes of action against R.F.C. and the other defendants.

Respectfully submitted,

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ARGUMENT.

This is not a case similar to the recent decision of this Court in *Dick* v. *New York Life Insurance Co.*, 79 S. Ct. 921, in which Mr. Justice Frankfurter's dissenting opinion objects to this Court's granting certiorari "to examine records for sufficiency of evidence" following a trial on the merits in the trial court.

The sole questions raised on this appeal are constitutional questions. They are, first, whether Petitioner having made a contract with R.F.C. and having sued R.F.C. for its breach is entitled to keep R.F.C. as a defendant in the case, to compel R.F.C. as a defendant to answer Petitioner's Interrogatories under Rule 33 and to have an adjudication of its claim against R.F.C., because of the fact that, although the functions of R.F.C. have been abolished, R.F.C. has never been dissolved or extinguished as a corporation, either by "Reorganization Plan No. 1 of 1957," or otherwise.

In view of the decision of this Court in *Hemingway* v. *Stansell*, 106 U.S. 399, Petitioner submits that the fact that the functions of R.F.C. may have been abolished did not have the effect of either dissolving or terminating R.F.C. as a governmental corporation, and therefore Petitioner is entitled to have discovery from R.F.C. under Rule 33 and to have its cause of action adjudicated in the trial court in this case, and to have R.F.C. kept as a defendant in the case for that purpose.

In construing "Reorganization Plan No. 1 of 1957", it is obvious that *it was not intended to dissolve R.F.C.* and *was not intended to permit a court to eliminate R.F.C. as a defendant in pending litigation against R.F.C.*, because the

amended Section 105 of the Reconstruction Finance Corporation Liquidation Act expressly provides that

> "No suit, action or other proceeding lawfully commenced by or against [R.F.C.] shall abate by reason of the dissolution of the [R.F.C.] Corporation." (Appendix VI, p. 30).

If the "Reorganization Plan No. 1 of 1957" *had dissolved* R.F.C. and *had abated* pending suits against it (such as Petitioner's suit in this case), such Plan would have been unconstitutional as a deprivation of the property rights of the R.F.C.'s creditors (such as Petitioner) without due process of law. It was no doubt for these two reasons that the "Reorganization Plan" merely "abolished" R.F.C.'s functions and "transferred" them to Floete (Appendix V, p. 25), *but did not dissolve R.F.C.*

In the second place, Petitioner's position is that the evidence making up the record in this case did not include the crucial evidence which Petitioner was entitled to offer at the trial of the action, because the trial court refused to require either R.F.C. or Floete to answer Petitioner's Interrogatories under Federal Rule 33 preparatory to trial. Petitioner's right to have its Interrogatories answered either by R.F.C. or by Floete is a mandatory right under Rule 33 of the Federal Rules. Nothing can be clearer than the fact that Petitioner has been deprived of its right to procedural due process of law by the refusal of the trial judge to require either R.F.C. or Floete to answer Petitioner's Interrogatories, to the end that Petitioner might obtain the necessary evidence to sustain its causes of action against R.F.C. and the other defendants.

In other words, even if the present decision *on the present record* should be correct (which Petitioner denies, but does not raise here), nevertheless Petitioner's position is

that it has been deprived of its constitutional right to its "day in court" and thereby has been deprived of its right to procedural due process of law under the Fifth Amendment, because Petitioner has been prevented from obtaining the evidence essential to proving its case at the trial of this action from either R.F.C. or Floete, under Rule 33. It is a fundamental principle of constitutional law that if a party to an action cannot obtain discovery in accordance with the Federal Rules, such as Rule 33, it has thereby been deprived of procedural due process of law in violation of the Fifth Amendment.

It is respectfully submitted that this Court should grant the present Petition for the reasons set forth in the Petition and in the Argument above.

Respectfully submitted,

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APPENDIX I.

GENERAL HOUSES, INC., *Plaintiff-Appellant,*

v.

FRANKLIN G. FLOETE, As Administrator of General Services, et al., *Defendants-Appellees.*

No. 311, Docket 25487

United States Court of Appeals
Second Circuit

Argued May 15, 1959.
Decided June 1, 1959.

Before SWAN, HINCKS, and MOORE, Circuit Judges.

PER CURIAM.

This is an action for alleged breach of two contracts, one between plaintiff and Reconstruction Finance Corporation, the other between plaintiff and Marloch Manufacturing Corporation. Early in 1947 plaintiff, without any production facilities, agreed with RFC to produce 2,000 prefabricated houses before the end of the year, promising to use its best efforts to sell them. RFC agreed to pay a stipulated sum for each house plaintiff should not be able to sell. Plaintiff then contracted with Marloch Manufacturing Corporation to produce the 2,000 houses during 1947, and Marloch proceeded to carry out its obligations. In August Marloch refused to continue because of plaintiff's failure to perform, only one house having been sold by plaintiff. The damages claimed by plaintiff are more than six million dollars. Federal jurisdiction over the defendants other than RFC rests on diversity of citizen-

ship. Franklin G. Floete, as Administrator of General Services, has been substituted for the defendant RFC. The case was tried without a jury by Chief Judge Byers who wrote a lengthy opinion and made detailed findings of fact. It is reported in D.C., 166 F. Supp. 106. Far from regarding his findings as clearly erroneous, we think them clearly correct. The appeal, as well as the alleged causes of action, appears to be utterly lacking in merit. They deserve no further discussion. Judgment affirmed."

APPENDIX II.

"GENERAL HOUSES, INC., Petitioner,

v.

The Honorable WALTER BRUCHHAUSEN, Judge of the District Court for the Eastern District of New York, Respondent.

Docket 25109

United States Court of Appeals

Second Circuit.

Argued April 7, 1958.

Decided April 28, 1958.

Before SWAN, HINCKS and MOORE, Circuit Judges.

PER CURIAM.

The petitioner seeks a writ of mandamus to direct vacation of an order made by Judge Bruchhausen in an action pending in the United States District Court for the Eastern District of New York, in which the petitioner is plaintiff. The action is for breach of contract and was commenced in 1950 against Reconstruction Finance Corporation as the primary defendant. In February 1958, when the case was on the Civil Non-Jury Calendar and about to be reached for trial, the plaintiff moved to add as additional parties defendant, the United States and Franklin G.

Floete, as Administrator of General Services, and for an adjournment of the trial until all original defendants and such additional defendants shall have answered interrogatories previously propounded by plaintiff to the original defendants. Judge Bruchhausen heard the motion and entered an order denying it 'in all respects except that Franklin G. Floete as Administrator of Public Services may be and hereby is substituted in place of defendant Reconstruction Finance Corporation pursuant to Reorganization Plan 1 of 1957.' This is the order which the petitioner seeks to have reviewed under the 'All Writs' section of the Judicial Code, 28 U.S.C.A. § 1651.

With respect to interrogatories and refusal to postpone trial until they were answered, the order under attack was plainly interlocutory. The petitioner's complaint is that the decision should have been different; but it is too well settled to require the citation of authorities that mandamus cannot be used to control the lower court's decision in interlocutory matters which can be reviewed on appeal from the final judgment, except under 'extraordinary' circumstances which are not present here.

With respect to so much of the order as refused to add the United States as a party and substituted the Administrator of General Services in place of the Reconstruction Finance Corporation the remedy of mandamus is also unavailable. The All Writs statute 'is to be used only in exceptional cases where abuse of discretion or usurpation of judicial power is "clear and indisputable."' Here the petitioner's right is far from 'clear and indisputable.'"

APPENDIX III.

SUPREME COURT OF THE UNITED STATES
"RE: GENERAL HOUSES v. BRUCHHAUSEN,
NO. 768 Misc., Oct. Term 1957:

'The motion for leave to file petition for writ of mandamus or, in the alternative, for writ of prohibition or certiorari, is denied.' "

APPENDIX IV.

"DISTRICT COURT OF THE UNITED STATES
FOR THE EASTERN DISTRICT OF NEW YORK

Civil Action No. 10994

GENERAL HOUSES, INC., a corporation, Plaintiff-Appellant,

v.

RECONSTRUCTION FINANCE CORPORATION, a corporation, MARLOCH MANUFACTURING CORPORATION, a corporation, THE GREENPORT BASIN AND CONSTRUCTION COMPANY, a corporation, ELIZABETH W. TULLOCH and CHARLES M. ROSS, as Executors and Trustees of the Estate of Marshall E. Tulloch, Deceased, and Franklin G. Floete, as Administrator of General Services, Defendants-Appellees.

JUDGMENT.

At Brooklyn, New York, in said district on October 3, 1958.

The issues in the above entitled action having duly come on to be heard before the Honorable Mortimer W. Byers without a jury at a Trial Term of this Court, held in the

United States Court House, 271 Washington Street, Borough of Brooklyn, City and State of New York, on the 20th, 21st, 22nd, 23rd, 26th, 27th and 28th days of May, 1958, and the plaintiff having appeared therein by Bokat & Bokat, Edmund W. Bokat, Esq., of counsel, and defendant Franklin G. Floete, as Administrator of General Services by Charles R. L. Hemmersley, Esq. and the defendants Marloch Manufacturing Corporation, The Greenport Basin and Construction Company, Elizabeth W. Tulloch and Charles M. Ross, by Donovan, Leisure, Newton & Irvine, Esqs., Walter N. Mansfield and Helmut Furth, Esqs., of counsel, and the issues having been duly tried and the Court having heard the allegations and proofs of the parties, and after due deliberation having been had thereon; and the Court having duly made and filed its decision on September 19, 1958; it is

Ordered, Adjudged and Decreed, that defendants and each of them is hereby awarded judgment on the merits against the plaintiff as to each and all of the so-called counts in the complaint, and that the defendants herein recover from plaintiff their respective costs in this action.

Mortimer Byers
U.S.D.J."

APPENDIX V.

"REORGANIZATION PLAN NO. 1 OF 1957
Eff. June 30, 1957, 22 F.R. 4633, 71 Stat.——

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, April 29, 1957, pursuant to the provisions of the Reorganization Act of 1949, approved June 20, 1949, as amended.

ABOLITION OF THE RECONSTRUCTION FINANCE CORPORATION

Section 1. Definitions. As used in this reorganization plan:

(a) The term 'Corporation' means the Reconstruction Finance Corporation.

(b) The term 'remaining functions' means (1) all functions of the Corporation, (2) except as otherwise provided in subsections (b) and (c) of section 6 of this reorganization plan, all functions of the Secretary of the Treasury under section 10 of the Reconstruction Finance Corporation Act, as amended (15 U.S.C.A. 609) [section 609 of this title], and (3) all functions of the Secretary of the Treasury under sections 102 and 106(b) of the Reconstruction Finance Corporation Liquidation Act (67 Stat. 230, 231), as amended [sections 603 and 609 note of this title].

(c) The term 'transferees' means the Housing and Home Finance Administrator, the Administrator of General Services, the Administrator of the Small Business Administration, and the Secretary of the Treasury.

Sec. 2. Transfer of functions. (a) There are hereby transferred to the Housing and Home Finance Administrator the remaining functions with respect to or arising out of (1) the securities and obligations of, loans made to, and contracts or other agreements with, States, municipalities, political subdivisions thereof, public agencies, boards, commissions or other public bodies, and (2) loans, securities and obligations acquired in connection with programs of financial assistance for drainage and irrigation projects.

(b) There are hereby transferred to the Administrator of General Services the remaining functions with respect to or arising out of (1) the affairs of the Smaller War

Plants Corporation which were transferred to the Corporation pursuant to Executive Order No. 9665 of December 27, 1945 (11 F.R. 3) and section 207 of Public Law 132—80th Congress (61 Stat. 209); (2) the national defense, war and reconversion activities with respect to which notes of the Corporation were cancelled pursuant to the provisions of Title II of Public Law 860—80th Congress (62 Stat. 1187), and (3) activities of the RFC Price Adjustment Board and the functions transferred to the Corporation by Executive Order No. 9841 of April 23, 1947 (12 F.R. 2645) [set out as note under section 601 of Appendix to Title 50].

(c) Except as otherwise provided in sections 2(d) (1) and 2(d) (2) of this reorganization plan (relating to financial assistance to railroads, etc., and to Schedule A hereto annexed), there are hereby transferred to the Administrator of the Small Business Administration the remaining functions with respect to or arising out of programs of financial assistance to business enterprises and to victims of floods or other disasters.

(d) There are hereby transferred to the Secretary of the Treasury all functions of the Corporation not otherwise transferred by the provisions of this reorganization plan, including, but not limited to, all functions of the Corporation with respect to or arising out of (1) programs of financial institutions, and insurance companies, (2) the obligations and loans listed in Schedule A hereto annexed, and (3) the War Damage Corporation.

(e) The foregoing transfers include the transfer to each transferee, for use in executing his respective functions thereunder, of the powers, authority, rights, and immunities now vested in or available or applicable to the Corporation for carrying out the functions transferred to the transferee under this reorganization plan.

Sec. 3. Transfer of assets and liabilities. The loans, obligations, securities, capital stock, and other assets pertaining to the functions transferred by section 2 of this reorganization plan (including accrued interest thereon, and property acquired in connection therewith) and the liabilities, contracts, bonds, mortgages, notes and other instruments relating thereto are hereby transferred from the Corporation to the respective transferees: Provided, however, That all assets, liabilities, and commitments relating to the functions transferred by section 2(a) of this reorganization plan are hereby transferred to the Revolving Fund (Liquidating Programs) established by the Independent Offices Appropriation Act, 1955 (68 Stat. 295) [section 1701g-5 of Title 12].

Sec. 4. Administrative property, personnel, funds and records. In addition to the transfers made by the provisions of section 3 of this reorganization plan, there shall be transferred to the Housing and Home Finance Agency, General Services Administration, Small Business Administration, and Treasury Department so much as the Director of the Bureau of the Budget shall determine to be appropriate by reason of transfers made by sections 2 and 3 of this reorganization plan of the administrative property, personnel, records, liabilities and commitments of the Corporation or of the Office of Production and Defense Lending in the Department of the Treasury and of the authorizations, allocations, and funds available or to be made available with respect to the transferred functions (including, but in no way limiting the generality of the foregoing, the authority to issue notes or other obligations to the Secretary of the Treasury, which may be purchased by the Secretary, under section 7 of the Reconstruction Finance Corporation Act, as amended (15 U.S.C.A. 606) [section 606 of this title], and the duty of making payments on such notes or obligations issued by or transferred

to the respective transferee hereunder). In allocating the administrative expense funds applicable to the functions transferred by the provisions of this reorganization plan the said Director shall allocate and transfer to the General Services Administration as a payment on behalf of the Housing and Home Finance Agency, General Services Administration, Small Business Administration and Treasury Department such sum for refit of building space for the carrying out of the transferred functions during the fiscal year ending June 30, 1958, as the said Director shall determine. Such further measures and disposition as the Director of the Bureau of the Budget shall determine to be necessary in order to effectuate the transfers provided for in this section shall be carried out in such manner and by such agencies as the Director shall direct.

Sec. 5. Delegation of authority. Each transferee may from time to time make such provisions as he shall deem appropriate authorizing the performance by any officer, employee, agency, or administrative unit under his jurisdiction of any function transferred to him by the provisions of this reorganization plan.

Sec. 6. Abolition of the Corporation. (a) The Corporation is hereby abolished.

(b) The Secretary of the Treasury shall retire the capital stock of the Corporation and, subject to the provisions of section 4 hereof, shall pay into the Treasury, as miscellaneous receipts, all unused funds of the Corporation.

(c) Not later than June 30, 1959, the Secretary of the Treasury shall transmit a report to the Congress, which report (1) shall cover the affairs of the Corporation up to the time of the taking effect of the provisions of this reorganization plan, and (2) shall correspond to the final

report required by section 10 of the Reconstruction Finance Corporation Act, as amended (15 U.S.C. 609) [section 609 of this title]. The function of making the final report provided for in the said section 10 [section 609 of this title] is hereby abolished.

Sec. 7. Effective date. The provisions of this reorganization plan shall take effect at the time determined under the provisions of section 6(a) of the Reorganization Act of 1949, as amended [section 133z-4(a) of Title 5], or at the close of June 30, 1957, whichever is later."

APPENDIX VI.

15 U.S.C.A., 1958, Cumulative Annual Pocket Parts, Sec. 603, p. 30.

"*Continuation of Pending Proceedings.* Act July 30, 1953, c. 282, Title I, § 105, 67 Stat. 237, as amended by Act June 29, 1954, c. 410 § 2(c), 68 Stat. 320, provided that: 'No suit, action, or other proceeding lawfully commenced by or against the Reconstruction Finance Corporation shall abate by reason of the dissolution of the Corporation; but the court may on motion or supplemental petition filed at any time within twelve months after the date of such dissolution and showing a necessity for a survival of such suit, action, or other proceeding to obtain a settlement of the questions involved, allow the same to be maintained by or against the officer or agency of the Government performing the functions with respect to which any such suit, action, or other proceeding was commenced.'"

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Office-Supreme Court, U.S.
FILED
OCT 13 1959
JAMES R. BROWNING, Clerk

No. 408

In the Supreme Court of the United States

OCTOBER TERM, 1959

GENERAL HOUSES, INC., PETITIONER

v.

FRANKLIN G. FLOETE, AS ADMINISTRATOR OF GENERAL SERVICES, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR FRANKLIN G. FLOETE, ADMINISTRATOR OF GENERAL SERVICES, IN OPPOSITION

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Solicitor General,
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BRIEF FOR FRANKLIN G. FLOETE, ADMINISTRATOR OF GENERAL SERVICES, IN OPPOSITION

OPINIONS BELOW

The opinion of the United States District Court for the Eastern District of New York (R. 125a–162a) is reported at 166 F. Supp. 106. The opinion of the Court of Appeals for the Second Circuit (R. 450a) is reported at 267 F. 2d 306.

JURISDICTION

The judgment of the court of appeals was entered on June 1, 1959 (R. 453a). On August 19, 1959, Mr. Justice Brennan entered an order extending the time for filing a petition for a writ of certiorari to September 18, 1959. The petition for a writ of certiorari

was filed on September 15, 1959. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether, after the Reconstruction Finance Corporation was abolished and the Administrator of General Services succeeded to those of its functions involved in this case, the district court erred in substituting the Administrator for the RFC as a defendant.

2. Whether the district court abused its discretion in not requiring the Corporation or the Administrator to answer a set of three hundred interrogatories propounded by petitioner.

STATUTE AND REORGANIZATION PLAN INVOLVED

The pertinent provisions of the Reconstruction Finance Corporation Liquidation Act, and of Reorganization Plan No. 1 of 1957, are set forth in the Appendix, *infra*, pp. 8–11.

STATEMENT

This is an action for alleged breach of a contract entered into in 1947 between petitioner and the Reconstruction Finance Corporation ("RFC"), under which petitioner agreed to produce 2,000 prefabricated houses and the RFC guaranteed a market for any houses which petitioner could not sell. In 1950, petitioner instituted this action in the district court against, *inter alia*, RFC and Marloch Manufacturing Corporation, a subcontractor which had agreed to construct the houses for petitioner.

The RFC was abolished on June 30, 1957, by Reorganization Plan No. 1 of 1957 (22 F.R. 4633, 71 Stat. 647, 15 U.S.C. 601 note), *infra*, p. 8, and its remaining functions transferred to various government agencies, including the General Services Administration. On February 14, 1958, petitioner moved in the district court for an order (1) joining the United States of America and respondent Floete, as Administrator of General Services, as additional parties defendant, and (2) postponing the commencement of the trial until the original defendants and the proposed additional defendants answered a lengthy set of interrogatories previously propounded jointly to all of the original defendants (R. 103a). Prior to the hearing on this motion, answers to all the interrogatories were furnished by all of the original defendants except the RFC (R. 331a).

On March 6, 1958, after a hearing, the district court denied the motion, but directed that the Administrator be substituted for the RFC (R. 102a; 115a–116a). Petitioner unsuccessfully attempted to review these interlocutory orders through an extraordinary writ, *General Houses, Inc.* v. *Bruchhausen*, 256 F. 2d 674 (C.A. 2), 357 U.S. 924.

After trial without a jury, the district court, in a lengthy opinion which discussed the evidence in detail (R. 125a–162a), held that petitioner had failed to comply with its contract with RFC, and that the latter had not breached the contract (R. 147a), and entered judgment in favor of all defendants on all counts of the complaint (R. 162a–163a). In so ruling, it stated (R. 146a) that the "inference is almost inescapable"

that this suit "was instituted * * * in the hope of forcing a settlement, rather than for the purpose of litigating what was believed to be a meritorious cause of action."

The Court of Appeals for the Second Circuit affirmed *per curiam*. It stated that "the appeal, as well as the alleged causes of action, appears to be utterly lacking in merit. They deserve no further discussion" (Pet. 21–22).

ARGUMENT

Petitioner specifically accepts the correctness of the trial court's findings that the contract had not been breached, and the court of appeals' affirmance thereof as "clearly correct" (Pet. 15). It contends only that the trial court erred (1) in substituting respondent Floete, as Administrator of General Services, for the defendant RFC, after the latter had been abolished and those of its functions involved in the instant case transferred to the General Services Administration; and (2) in refusing to direct both RFC and Floete to answer certain interrogatories propounded by it. Neither of these contentions has any substance.

1. Petitioner's contention (Pet. 10–13) that, despite the abolition of the RFC and the transfer of its functions to other Government agencies (one of which was substituted for it), it nevertheless had a constitutional right to retain the RFC as a party, is frivolous. The argument is that since Reorganization Plan No. 1 of 1957 did not "dissolve" the RFC, but only "abolished" it, the provision in Section 105 of the Reconstruction Finance Corporation Liquidation Act providing for substitution of successors to the RFC upon its "disso-

lution" is inapplicable. This argument ignores the obvious facts that the purpose of the Plan was to terminate the agency's existence and to transfer its functions to other agencies, and not just to provide for a technical "abolition" of the Corporation; and that the purpose of Section 105 was to provide, after termination, for continuation by the successors of pending litigation involving the RFC. The use in the Plan of the word "abolished" rather than "dissolved" stems from the Reorganization Act of 1949 (63 Stat. 203, as amended, 5 U.S.C. 133z, *et seq.*), pursuant to which the plan was transmitted. The latter Act contemplated the termination of both corporate and non-corporate Government agencies. Since the term "dissolve" is generally employed only in connection with terminating the existence of a cor-

---

This purpose is reflected in the President's message transmitting the Reorganization Plan to Congress, which stated:

"The plan also transfers the pertinent assets of the Corporation to the respective agencies, together with the related liabilities, and by operation of law substitutes the particular transferee for the Corporation with respect to all instruments of every kind and character pertaining to the transferred functions, assets, and liabilities. In order to permit the transferees to administer the transferred matters with the same flexibility of operation as obtains at present, the plan transfers to each transferee those powers, authority, rights, and immunities which are now available or applicable to the Corporation for carrying out the respective functions. To the extent that it becomes necessary or desirable, therefore, the transferees will be enabled, with respect to the transferred functions, to sue and be sued, to engage private attorneys in conjunction with litigation involving the transferred functions, and to avail themselves of any other authority, powers or immunities now available to the Corporation, whether under the Reconstruction Finance Corporation Act, as amended, or otherwise. * * *." (5 U.S.C. 133z-15.)

poration, the Act used the more general term "abolish." Obviously, the use of the word "dissolved" in the Reconstruction Finance Corporation Liquidation Act was not intended to make substitution of successors turn upon technical distinctions of corporation law.

Contrary to petitioner's statement (Pet. 13), the district court fully considered, and rejected, petitioner's claim that the RFC had breached the contract. It is irrelevant that, at the time of such adjudication, respondent Floete had been substituted as a party defendant for the RFC. For the RFC's liabilities had been transferred to him, and any judgment which petitioner might have obtained would, of course, have run against him and been satisfied by him. Indeed, petitioner's counsel himself conceded in the district court that the substitution of defendants would not affect the issues to be tried (R. 357a–358a).

2. There is no greater merit to the contention (Pet. 13–16) that petitioner had a constitutional right to have its interrogatories answered by the RFC and Floete. It is well settled that the district court may, in the exercise of its discretion, refuse to compel answers to interrogatories. See, *e.g.*, *Newell* v. *Phillips Petroleum Co.*, 144 F. 2d 338 (C.A. 10); *Volunteer Electric Co-operative* v. *Tennessee Valley Authority*, 139 F. Supp. 22 (E.D. Tenn.); *Porter* v. *Montalbo's*, 71 F. Supp. 372 (S.D. Ohio); *Onofrio* v. *American Beauty Macaroni Co.*, 11 F.R.D. 181 (W.D. Mo.).

The court did not abuse, but on the contrary correctly exercised, its discretion in refusing to require the RFC or Floete to answer the set of three hundred

interrogatories covering more than a hundred pages. As appears from the uncontradicted affidavits (R. 121a, 334a) submitted in opposition to petitioner's motion to require answers, the RFC had no employees who could answer the interrogatories, there is no one employed by the General Services Administration who has any personal knowledge of the matters referred to in them, and all the interrogatories were already answered by the other defendants. To have required answers in these circumstances would have caused an unwarranted additional delay in litigation which had already been "cluttering up the docket for many years" (*General Houses, Inc.* v. *Marloch Manufacturing Corp.*, 239 F. 2d 510, 515 (C.A. 2)). Petitioner's unsupported claim (Pet. 14) that, had the interrogatories been answered, it could have discovered certain "crucial facts," affords no basis for overturning the trial court's ruling.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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OCTOBER 1959.

APPENDIX

Reorganization Plan No. 1 of 1957, 22 F.R. 4633, 71 Stat. 647, 15 U.S.C. 601 note, provides in part:

ABOLITION OF THE RECONSTRUCTION FINANCE CORPORATION

Section 1. Definitions. As used in this reorganization plan:

(a) The term 'Corporation' means the Reconstruction Finance Corporation.

(b) The term 'remaining functions' means (1) all functions of the Corporation, (2) except as otherwise provided in subsections (b) and (c) of section 6 of this reorganization plan, all functions of the Secretary of the Treasury under section 10 of the Reconstruction Finance Corporation Act, as amended (15 U.S.C. 609) [section 609 of this title], and (3) all functions of the Secretary of the Treasury under sections 102 and 106(b) of the Reconstruction Finance Corporation Liquidation Act (67 Stat. 230, 231), as amended [sections 603 and 609 note of this title].

(c) The term 'transferees' means the Housing and Home Finance Administrator, the Administrator of General Services, the Administrator of the Small Business Administration, and the Secretary of the Treasury.

Sec. 2. Transfer of functions. * * *

(b) There are hereby transferred to the Administrator of General Services the remaining functions with respect to or arising out of (1) the affairs of the Smaller War Plants Corporation which were transferred to the Corporation pursuant to Executive Order No. 9665 of December 27, 1945 (11 F.R. 3) and section 207 of

Public Law 132—80th Congress (61 Stat. 209), (2) the national defense, war and reconversion activities with respect to which notes of the Corporation were cancelled pursuant to the provisions of Title II of Public Law 860—80th Congress (62 Stat. 1187), and (3) activities of the RFC Price Adjustment Board and the functions transferred to the Corporation by Executive Order No. 9841 of April 23, 1947 (12 F.R. 2645) [set out as note under section 601 of Appendix to Title 50].

* * * * *

(e) The foregoing transfers include the transfer to each transferee, for use in executing his respective functions thereunder, of the powers, authority, rights, and immunities now vested in or available or applicable to the Corporation for carrying out the functions transferred to the transferee under this reorganization plan.

Sec. 3. Transfer of assets and liabilities. The loans, obligations, securities, capital stock, and other assets pertaining to the functions transferred by section 2 of this reorganization plan (including accrued interest thereon, and property acquired in connection therewith) and the liabilities, contracts, bonds, mortgages, notes and other instruments relating thereto are hereby transferred from the Corporation to the respective transferees: Provided, however, That all assets, liabilities, and commitments relating to the functions transferred by section 2(a) of this reorganization plan are hereby transferred to the Revolving Fund (Liquidating Programs) established by the Independent Offices Appropriation Act, 1955 (68 Stat. 295) [section 1701g–5 of Title 12].

Sec. 4. Administrative property, personnel, funds and records. In addition to the transfers made by the provisions of section 3 of this reorganization plan, there shall be transferred to the Housing and Home Finance Agency, Gen-

eral Services Administration, Small Business Administration, and Treasury Department so much as the Director of the Bureau of the Budget shall determine to be appropriate by reason of transfers made by sections 2 and 3 of this reorganization plan of the administrative property, personnel, records, liabilities and commitments of the Corporation or of the Office of Production and Defense Lending in the Department of the Treasury and of the authorizations, allocations, and funds available or to be made available with respect to the transferred functions (including, but in no way limiting the generality of the foregoing, the authority to issue notes or other obligations to the Secretary of the Treasury, which may be purchased by the Secretary, under section 7 of the Reconstruction Finance Corporation Act, as amended (15 U.S.C. 606) [section 606 of this title], and the duty of making payments on such notes or obligations issued by or transferred to the respective transferee hereunder). In allocating the administrative expense funds applicable to the functions transferred by the provisions of this reorganization plan the said Director shall allocate and transfer to the General Services Administration as a payment on behalf of the Housing and Home Finance Agency, General Services Administration, Small Business Administration and Treasury Department such sum for rent of building space for the carrying out of the transferred functions during the fiscal year ending June 30, 1958, as the said Director shall determine. Such further measures and disposition as the Director of the Bureau of the Budget shall determine to be necessary in order to effectuate the transfers provided for in this section shall be carried out in such manner and by such agencies as the Director shall direct.

* * * * *

Sec. 6. Abolition of the Corporation. (a) The Corporation is hereby abolished.

(b) The Secretary of the Treasury shall retire the capital stock of the Corporation and, subject to the provisions of section 4 hereof, shall pay into the Treasury, as miscellaneous receipts, all unused funds of the Corporation.

(c) Not later than June 30, 1959, the Secretary of the Treasury shall transmit a report to the Congress, which report (1) shall cover the affairs of the Corporation up to the time of the taking effect of the provisions of this reorganization plan, and (2) shall correspond to the final report required by section 10 of the Reconstruction Finance Corporation Act, as amended (15 U.S.C. 609) [section 609 of this title]. The function of making the final report provided for in the said section 10 [section 609 of this title] is hereby abolished.

* * * * *

Section 105 of the Reconstruction Finance Corporation Liquidation Act, 67 Stat. 231, as amended, 15 U.S.C. 603 note, provided:

> No suit, action, or other proceeding lawfully commenced by or against the Reconstruction Finance Corporation shall abate by reason of the dissolution of the Corporation; but the court may, on motion or supplemental petition filed at any time within twelve months after the date of such dissolution and showing a necessity for a survival of such suit, action, or other proceeding to obtain a settlement of the questions involved, allow the same to be maintained by or against the officer or agency of the Government performing the functions with respect to which any such suit, action, or other proceeding was commenced.

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